43. AT&T has suggested adding certain fields to version 7.0 of EDI to accommodate "subsequent partial migrations." (Bradbury, ¶¶ 89-109). These fields are part of version 8.0 of EDI, which has not yet been implemented by the industry. At the Electronic Interface Change Control meeting that occurred on July 13, 1998, the participating CLECs, including AT&T, asked BellSouth not to make any changes to EDI without their input. The CLECs also proposed that, instead of implementing versions 8.0, 9.0, and 10.0 of EDI sequentially, they would select the "best of" each version for implementation by BellSouth. If the CLECs agree on this approach (which is agreeable to BellSouth), then the next version of EDI will not be implemented until mid to late 1999.

2. ISSUES REGARDING THE ORDERING OF UNE "COMBINATIONS"

44. AT&T claims that BellSouth has failed to promulgate adequate business rules that would enable CLECs to place orders successfully for combinations of UNEs. (AT&T at 30; Bradbury Affidavit ¶¶ 71-78; Pfau/Dailey Affidavit, ¶ 50; Augier Affidavit, ¶ 37). UNE "combinations" are discussed in the Affidavit of Alphonso Varner and in ¶¶ 100-102 of my affidavit. As described in my affidavit, BellSouth accepts UNE combination orders at cost-based rates in Kentucky. For orders in that state, BellSouth provided AT&T with ordering requirements for loop/port combinations in March, 1998. The LEO Guide and the Ordering Guide for

CLECs also contain requirements for electronic and manual orders for UNEs.

45. AT&T claims that all its orders for UNE combinations in Kentucky submitted via EDI through July 9, 1998 were rejected because they lacked the additional line (ADL) field identifier (FID). (Bradbury Affidavit, ¶¶ 16, 20, 71-78, 274-277; Pfau Affidavit, ¶ 50; AT&T Comments at 39). That rejection occurred is true, but not necessarily for the reason given by AT&T. On May 4, 1998, AT&T sent its first seventeen (17) loop/port ("M") orders for Kentucky customers to BellSouth electronically through EDI. Eight (8) lacked the ADL FID, and the remaining nine (9) had insufficient end user information (meaning they lacked the end user's telephone number). AT&T was sent electronic notification messages regarding these errors and was asked for clarification, but AT&T did not submit corrected orders.

46. The placement of "ADL" on an order identifies it as an order for an additional line. The ADL FID is a part of the Service Order Edit Routine (SOER) edits (Exhibit WNS-CD-3). The same SOER edits are used for both BellSouth retail and CLEC orders. AT&T received an electronic copy of the SOER edits on January 30, 1998. The SOER edits are available to all CLECs on BellSouth's interconnection Web site. FIDs, including the ADL FID, are placed in the feature detail section of electronic orders. Before April, 1998, BellSouth service representatives in the LCSC added

the ADL FID manually to CLEC orders. Instructions regarding FIDs are located in the Local Exchange Ordering Guide. In addition the ADL FID requirement was explained to AT&T on May 4, 1998, after eight (8) of the seventeen (17) "M" orders sent on that date contained an error for the lack of the ADL FID.

47. A BellSouth representative not only explained the use of the ADL FID to AT&T, on May 4, 1998, but also made other calls to AT&T over the course of May 5-8 to explain the error codes. On May 6, 1998, BellSouth's account team sent AT&T an e-mail message offering to provide further help if needed. On May 11, 1998, BellSouth conducted a conference call with AT&T to discuss the errors. On May 15, 1998, BellSouth's AT&T account team discussed ADL error code with AT&T, and then provided AT&T with a current copy of the error list through e-mail. During May and June, 1998, BellSouth again advised AT&T that the ADL FID was required.

48. AT&T claims that the "insufficient end-user data" code also meant the ADL FID was missing. (Bradbury Affidavit (AT&T), ¶ 74). This code actually means that the order was missing the end user's telephone number, which is one of the most basic pieces of information needed to process a correct and complete order for service. The end user's telephone number is a required element on all orders for end users who are converting their service from BellSouth to a CLEC, not just for "M"

orders (loop/port combinations). May 4, 1998 was not the first time this code had appeared when AT&T submitted orders. The "insufficient end user information" error had appeared previously when AT&T began submitting orders for interim number portability (INP), via version 7.0 of the EDI interface. BellSouth discussed this problem with AT&T and "walked" AT&T through the process of ordering INP in April, 1998. It was during this process, on or about April 28, 1998, that AT&T acknowledged that the insufficient end user information error was caused by a problem with the programming on AT&T's side of the EDI interface. Several of these April, 1998 orders had the insufficient end user information ("incomplete LOCBAN", *i.e.*, no end user telephone number) problem.

49. Instead of immediately fixing the programming problem with its side of version 7.0 of EDI, AT&T suggested that BellSouth should implement fields found in version 8.0 of EDI as a part of version 7.0. AT&T continued submitting orders, and apparently did not correct this programming problem until mid-July, 1998, as discussed below.

50. In ¶ 41 of his Affidavit, Mr. Bradbury explains that AT&T "sent its updated EDI mapping to BellSouth on June 29, 1998, and asked that BellSouth provide it with any necessary modifications by June 30, 1998." Mr. Bradbury complains that BellSouth had not responded by July 6, 1998, so AT&T asked again for feedback. AT&T began sending "M" orders on July 9, 1998 without feedback. Contrary to AT&T's implication, after receiving

the request from AT&T on June 29, 1998, BellSouth promised AT&T that it would provide feedback. On July 10, 1998, BellSouth sent its recommendations to AT&T. The one-day turnaround time requested by AT&T was not reasonable in this instance. Certainly AT&T cannot dispute this, since it criticizes BellSouth for requesting a one-day turnaround for information on USOCs for directory listings, a much simpler request than AT&T's. (Bradbury Affidavit (AT&T), ¶ 55).

51. On July 9, 1998, AT&T submitted nine (9) loop/port "M" orders for Kentucky customers. The nine (9) orders were rejected, either because the order was missing the ADL FID, or because the order had insufficient end user information. AT&T submitted nine (9) more orders on July 13, 1998, some of which were the same orders sent on May 4 and July 9, 1998. These nine (9) orders were rejected for the following reasons: six (6) orders were missing the end user's telephone number - the same error AT&T received on some of their July 9 and May 4 orders - and three (3) orders caused a different error code. BellSouth has determined that this latter error message was caused by a problem with the LEO database sending these orders to the Local Exchange Service Order Generator (LESOG), which is on BellSouth's side of the EDI interface. BellSouth fixed this on August 16, 1998. In the interim, the Local Carrier Service Center used a work-around to process correctly submitted loop/port combination orders.

52. AT&T apparently fixed its programming problem related to "insufficient end user information" on or about July 13, 1998. Although some orders sent on July 13, 1998 were rejected, on July 13 and July 20, 1998, AT&T successfully sent eight (8) orders, five (5) of which were corrected versions of orders previously rejected because of missing end user information. These orders were successfully processed and Firm Order Confirmations (FOCs) were sent via the EDI interface to AT&T on July 23, 1998. BellSouth completed provisioning and billing for these orders on July 23 through July 27, 1998 (one order on July 23, six orders on July 24, and one order on July 27).

53. AT&T claims that BellSouth delayed implementation of electronic ordering of UNE combinations. (Bradbury Affidavit (AT&T), ¶¶ 274-275). BellSouth disagrees. As the description above indicates, BellSouth has worked closely with AT&T to develop this process. AT&T could have had this capability sooner, but it requested a delay in the implementation of version 7.0 of the EDI interface, which included the ability to process "M" orders. As early as October, 1997, AT&T requested that BellSouth delay the implementation date for EDI version 7.0 from the agreed-upon implementation date of December 15, 1997, until March 16, 1998, because AT&T had not completed its final specifications. BellSouth agreed to assist AT&T with preparing its Final Specifications and to cooperate with AT&T in meeting the March 16, 1998, production date for

EDI version 7.0. Another delay occurred in early February 1998, when BellSouth and AT&T were nearing agreement on a test plan. AT&T changed the scope of the plan from Kentucky to region-wide, requiring BellSouth and AT&T to begin negotiating a new plan.

54. AT&T complains that BellSouth canceled meetings relating to EDI deployment. After the test plan was signed in April, 1998, there was one meeting scheduled for May 5 to review the EDI mapping. That meeting was canceled by AT&T on May 1, 1998. BellSouth is unaware of any other canceled meetings.

B. EXACT ORDERING ISSUES

55. AT&T complains that "only" eight UNEs can be ordered electronically via EXACT, rather than all the UNEs in Exhibit WNS-30. (Bradbury Affidavit, ¶ 201). Non-discriminatory access does not require that all information and functions be electronic and involve no manual handling. BellSouth has mechanized ordering via EXACT for those UNEs that are not complex and that are ordered at volumes that justify the cost of mechanization.

C. LENS ORDERING ISSUES

56. KMC claims that many electronic resale orders fall into error status because the CLEC is unable to enter the appropriate codes using the LENS program. KMC provides the following example: BellSouth offers its

end users the option of paying an additional monthly charge to cover the cost of inside wire maintenance, the code for which is TDG. KMC contends there is no field on the LENS screen for the CLEC to enter the TDG code. (KMC at 18; Davis Affidavit (KMC) ¶ 10). This is not true. CLECs may enter appropriate codes in the "Feature/Services" field on the "Service Detail" screen of LENS, as documented in the Local Exchange Implementation Ordering (LEO) Guide (Exhibit WNS-CD-2 to initial Stacy OSS Affidavit).

D. DOCUMENTATION

57. AT&T and MCI complain about errors that they have found in the LEO guide. (Bradbury Affidavit (AT&T) ¶¶ 67-70 & Attachment 16; AT&T at 38-39; Green Affidavit (MCI) ¶ 98). BellSouth agrees that there have been errors in the LEO Guide. BellSouth, therefore, updates this guide regularly and includes corrections submitted by CLECs. While BellSouth strives to produce an error-free guide, errors in a technical document that is over 1,600 pages long can hardly be considered unexpected or unreasonable.

58. Attached is Exhibit WNS-Reply-3, which are the LEO edits. An out-of-date version was inadvertently filed to my initial affidavit as Exhibit WNS-21.

59. To address the DOJ's claim on pages 39-40 regarding notice of systems changes: BellSouth has posted and continues to post notices of systems changes on BellSouth's Interconnection Web site. Those notices have included:

January 19, 1998: Notice of a new inquiry option to LENS (the "View All" mode which does not require multiple address validations)

February 10, 1998: Notice of Release of LENS Enhancement (extended telephone number reservation period to 30 days in inquiry mode)

February 23, 1998: Notice of Release 2.0 of LENS and EDI (included electronically-transmitted order rejection notices and TCIF version 7.0 EDI)

April 10, 1998: Notice of LENS Release 2.1

June 18, 1998: Notice of Release 3.0 - BellSouth's Electronic Interfaces

August 10, 1998: Notice of Release 3.1 - BellSouth's Electronic Interfaces

E. OTHER ORDERING ISSUES

60. The 1996 Act does not require BellSouth to support multiple versions of OSS interfaces. As stated in my initial affidavit, BellSouth will support the previous version of its OSS software for 90 days after the implementation

of the new version. (Stacy OSS Affidavit, ¶ 95). BellSouth has not reduced this period to 60 days as stated by AT&T. (Bradbury Affidavit (AT&T) ¶ 45 & Attachment 9).

61. AT&T speculates that resellers cannot use EDI to order services that account for more than a billion dollars of revenue to BellSouth. (AT&T at 44; Bradbury Affidavit (AT&T), ¶ 206). This claim is not supported by the ARMIS data on which AT&T relies, or any other data of which BellSouth is aware. The important point, though, is that these services are ordered by CLECs in the same manner as they are by BellSouth. As stated in my initial affidavit at paragraphs ¶¶ 136-138, these products are primarily complex services, which are handled manually for both BellSouth and CLECs. Additionally, it is important to remember that a CLEC may use EDI to place a resale order for any complex service, as long as the end user simply is "switching-as-is" from BellSouth to a CLEC (which is essentially a billing change). (Stacy OSS Affidavit, ¶ 88).

62. There are several important issues that both the commentors and the DOJ overlooked in their comments relating to flow-through. These parties focus on the orders placed through EDI and cite various issues, particularly the supposedly low flow-through rate for orders placed via EDI. A comparison of the flowthrough rates by interface is shown below.

	March	April	May	June	July
EDI Flowthrough	58.3%	53.5%	58.8%	78.3%	76.5%
LENS Flowthrough	90.1%	85.8%	87.9%	88.3%	91.5%
Combined Flowthrough	85.6%	84.6%	86.4%	87.1%	90.9%

(Note: The EDI rate calculation contains data for those CLECs that submitted 100% of their orders via EDI)

63. The EDI flow through rate and the LENS flowthrough rate have both improved significantly since March, although the EDI rate is not yet at the level of the LENS rate. One reason for lower flow-through rates for EDI users has to do with edits. BellSouth is responsible for the LENS edits, which are rather extensive, and the CLECs are responsible for their own EDI edits, which, in many cases, apparently are lacking. Additionally, the mix of orders sent by the EDI users tends to contain more business orders than the LENS users' orders. BellSouth's flowthrough rate for business orders varies between 79% and 82%. The EDI rates closely approached this range in the June and July time frames. Finally, a major point that is overlooked by the commentors and the DOJ is the fact that, regardless of the source (LENS or EDI), all CLEC orders are treated exactly the same from LEO through to SOCS. The flow-through capabilities of the system (for residence and business resale orders) are demonstrated by the flow-through rates of the CLECs using LENS as well as those using EDI. In fact, CLECs using these systems placed orders at flow-through rates above 95% for each of the

months described in my Performance Measurements affidavit. The systems are capable of very high flow-through rates.

64. In evaluating the concerns of the DOJ and commentors regarding the low flow-through rates for users of EDI, BellSouth discovered an error in the flow-through report calculation provided with its application, which negatively impacted flow-through rates for EDI users and also the total flow-through rate for CLECs. (DOJ at 30-31; AT&T at 4, 42-42; Bradbury Affidavit (AT&T), ¶¶ 13, 20, 21; Pfau/Daily Affidavit (AT&T), ¶ 73-76). Although there are four complex services that may be ordered via EDI, these complex services are not "LESOG eligible" because LESOG does not generate those service orders. (See Stacy OSS Affidavit, ¶¶ 88, 118, 136). The error occurred when these orders for complex services were included in the "LESOG eligible" base of orders in the flow-through report. BellSouth is correcting this error and refiling the May flow-through report, which is included with my Performance Measures reply affidavit. The corrected combined flow-through rates for March, April, and May, 1998 are 85.6%, 84.6%, and 86.4% respectively. Although not available at the time of my initial affidavit, the flow-through rates for June and July, 1998 are 87% and 90.9%.

V. PROVISIONING ISSUES

65. ITC DeltaCom complains that it does not receive disconnect notices (loss notification) from BellSouth on a consistent basis, and that it just recently learned that a disconnect report is also available electronically. (Rozycki Affidavit (CompTel/ITC DeltaCom) ¶ 10; Rozycki Affidavit (ALTS/ITC DeltaCom) ¶16). BellSouth has discussed this issue with ITC DeltaCom, and BellSouth is preparing to send loss notifications to ITC DeltaCom via a Network Data Mover (NDM). It should be noted, however, that ITC DeltaCom must do programming of its own to receive this information electronically.

66. Several CLECs complain about BellSouth's procedures for notifying CLECs of service jeopardies. (MCI at 42-45; Green Affidavit ¶¶ 113, 116-125 & Ex. B; CompTel at 6-7; TRA at 27; Sprint at 34-35;, 10;; e.spire at 31; KMC at 18-19; Davis Affidavit (KMC) ¶ 9; Bradbury Affidavit (AT&T) ¶¶ 13, 21; AT&T at 4, 33). BellSouth provides this information to CLECs in substantially the same time and manner as it does to itself. (Stacy OSS, ¶¶ 148-153). In ¶ 150 my OSS Affidavit, moreover, I explained that electronic notification of service jeopardies was to be considered at an Electronic Interface Change Control committee meeting. At that meeting on July 13, 1998, the participating CLECs informed BellSouth that they were interested in this enhancement, but requested that BellSouth not to make any changes to EDI without their approval.

67. Sprint states that BellSouth retail sales representatives apparently receive electronic notification of service jeopardies. (Sprint at 35). The sales representatives do not receive electronic notification. The notification is printed out from the SOCS database at a service center in the same fashion that they are printed out from SOCS at the LCSC. (Stacy OSS, ¶ 149; Yingling, ¶ 28).

VI. MAINTENANCE AND REPAIR ISSUES

A. ELECTRONIC COMMUNICATION TROUBLE ADMINISTRATION GATEWAY (ECTA)

68. MCI argues that BellSouth could not have had its machine-to-machine gateway for repair and maintenance reporting (the Electronic Communications Trouble Administration Gateway) ready in November, 1997 as BellSouth claims, because MCI did not begin to use this gateway until July, 1998. (Green Affidavit (MCI), ¶¶ 173-174). BellSouth's side of the interface was ready at the end of November, 1997, as it stated in the Stacy OSS Affidavit at ¶ 175. MCI also claims that there has been no commercial usage of the ECTA interface, ignoring the fact that AT&T has used ECTA (see Stacy OSS Affidavit, ¶¶ 176, 216).

69. MCI claims that due to problems caused by BellSouth, MCI was unable to complete readiness testing of ECTA until July 15, 1998. (Green Affidavit (MCI), ¶¶ 173-174). BellSouth disagrees. The delay in testing occurred

because of a problem with MCI's side of the interface. MCI wanted to use the same interface to report local problems that it uses for long distance reporting. BellSouth asked MCI to provide "dual addresses" to separate the long distance information and the local information being relayed to MCI across the interface. Although MCI said it could do this, MCI later discovered it could not provide dual addressing. In order to separate the information, BellSouth agreed to rewrite its side of the interface to accommodate MCI's interface.

70. AT&T complains about the supposed lack of a machine-to-machine repair and maintenance interface to support UNEs. (Bradbury Affidavit (AT&T), ¶ 221). AT&T could use the ECTA interface, which was built at AT&T's request. ECTA provides access to the BellSouth maintenance OSS supporting both telephone-numbered and circuit-identified services, and supports both resold services and UNEs.

71. AT&T complains that BellSouth refused to provide TAFI functionality via the ECTA interface as AT&T requested. (Bradbury Affidavit (AT&T), ¶¶ 223-224). BellSouth has never told AT&T that it would incorporate TAFI functionality into the ECTA interface. AT&T's interconnection agreement called for an industry standard, machine-to-machine interface for repair and maintenance. The result was the ECTA interface. BellSouth offers CLECs the option of using an industry standard interface, ECTA, or TAFI, which is non-standard.

VII. ISSUES REGARDING CAPACITY, TESTING, AND ACTUAL USAGE

72. The DOJ expressed concern that the testing of Ernst & Young did not address the efficiency, effectiveness, and adequacy of the OSS. Those issues were not in the scope of work given to Ernst & Young by BellSouth. Ernst & Young's scope was to perform third party validations of the capabilities, functions, and capacities of BellSouth's systems, which they did. The initial and reply affidavits of Mr. Putnam of Ernst & Young address this issue.

73. AT&T claims that a report by BellCore on BellSouth's OSS software shows that the software is unready. (Bradbury Affidavit (AT&T) ¶ 236 & Attachment 40). BellSouth disagrees with AT&T's interpretation of this document. The BellCore report concludes that BellSouth's interfaces have been developed in compliance with the "Software Solution Process Framework" (SSPF). BellCore found "no major or minor nonconformances" with BellSouth's SSPF.

74. AT&T complains that BellSouth has misrepresented the capacities for OSS, in particular for LENS and EDI. (Bradbury Affidavit (AT&T) ¶ 23, 283-298). The differences in the capacity numbers reported for LENS and EDI reflect changes in the volume tests of these systems. In 1998, BellSouth changed the volume test split of orders entered through LENS and EDI to more closely mirror how CLECs are placing orders today and

how BellSouth expects them to place orders in the future. Specifically, when testing the capacity of these systems, BellSouth increased the number of orders sent via LENS, and decreased the numbers sent via EDI. This testing procedure in no way decreased the actual capacity of EDI.

75. As discussed in my previous affidavit, moreover, the systems and processes are common to both CLECs and BellSouth retail once the orders get to the SOCS. Therefore, the capacity available to CLECs and BellSouth is common from SOCS through all the provisioning and maintenance systems and functions.

I hereby swear that the foregoing is true and correct to the best of my information and belief.

William N. Stacy

William N. Stacy
Operations Vice President
Interconnection Services
BellSouth Telecommunications, Inc.

Subscribed and sworn to before me this
the 25 day of August, 1998.

Janice E Padgett

Notary Public

Notary Public, Gwinnett County, GA
My Commission Expires Feb. 19, 2000

EXHIBIT WNS OSS Reply – 1
MCI April 28, 1998 ExParte Presentation

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April 28, 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Ex Parte Submission in CC Docket No. 97-231; CC Docket No. 97-121; CC Docket No. 97-208; CC Docket No. 97-137

Dear Ms. Salas:

On Tuesday April 28, 1998, MCI submitted the attached document entitled "MCI's Response to Questions on Section 271 Legal Analysis" to Carol Mattey of the Common Carrier Bureau in response to legal issues relating to section 271 that were raised by staff.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

Keith L. Seat

Attachment

cc: Carol Mattey

MCI'S RESPONSE TO QUESTIONS ON SECTION 271 LEGAL ISSUES

Federal Communications Commission staff has asked MCI for its perspective on a series of legal questions relating to section 271 of the Telecommunications Act of 1996. In what follows MCI sets out its views.

As a general matter, many of the questions have to do with the Commission's authority to enforce the terms of section 271 relating to interconnection and to the provision of service through unbundled network elements in the aftermath of the Eighth Circuit's decision in Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998). The BOCs' strategy after the Eighth Circuit decision has been to suggest that virtually all Commission action relating to the 1996 Act is suspect, and that the Commission must act gingerly, or not at all, whenever it seeks to bring competition to local markets. They rely principally on the Eighth Circuit's conclusion that section 2(b) of the Communications Act creates a rebuttable presumption that, absent clear legislative direction, Congress did not give the Commission the authority to implement the Act's provisions.

While MCI has joined the Commission in challenging that conclusion (among others) at the Supreme Court, for present purposes it bears emphasis that the Eighth Circuit also concluded that, as to most of the provisions of the Act, Congress expressly granted the Commission the requisite authority. Particularly, with only a very few exceptions, that court rejected BOC claims that the Commission lacked jurisdiction over the Act's unbundling and interconnection requirements, and so upheld virtually all of the Commission's unbundling and interconnection regulations. In saying this we do not minimize the impact of the court's decision striking down the Commission's pricing jurisdiction or its "combination" rule. But the fact remains that most

of the Commission's regulations were sustained, leaving it ample authority to implement most of the pro-competitive provisions of the 1996 Act, even as interpreted by the Eighth Circuit.

This is a critical matter, because unless the Commission acts vigorously to enforce the 1996 Act, the prospects for local competition will be at best dim and uncertain. As the Commission has noted, the incumbent monopolists have no incentive to open their monopoly markets, and, to the contrary, have every incentive to preserve their monopoly status. Acknowledging this fact, in section 271 Congress created a special incentive for the BOCs -- the prospect of in-region long-distance entry if they irreversibly open their local markets. But the lesson of the last two years is that unless the Commission insists on real market-opening measures as a precondition for BOC long-distance entry, local telephone consumers will never see the benefits of competition.

Many of the BOCs' legal arguments prove only their continued resistance to opening their networks to competitive forces. Indeed, BOCs continue to challenge the most fundamental principles of the Act -- including their obligation to take the necessary steps to interconnect their network with the networks of would-be competitors, or to lease their network elements to these competitors. In what follows we demonstrate that the Commission has ample authority to insist that the Act's provisions be enforced. If local markets are to become competitive, the Commission must fully exercise its authority.

Track A/Track B.

a) The need for residential facilities-based service. Under section 271, Track A requires the existence of carriers providing exclusively or predominantly facilities-based service to business subscribers and the existence of carriers providing exclusively or predominantly

facilities-based service to residential subscribers. Congress viewed the existence of competitors for both residential and business service as a prerequisite of BOC entry into long distance, see H.R. Rep. No. 204, 104th Cong., 1st Sess., at 77 (House Report). Indeed, this Commission has already rejected SWBT's Oklahoma section 271 application based on the absence of competitors providing residential service. In Congress' eyes, competition is not sufficient in the absence of predominantly facilities-based competitors. See House Report at 76-77 (the requirement of a facilities based competitor "is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition").

Consequently, Congress required a BOC to show the existence of a predominantly facilities-based competitor for both business and residential services as a precondition of entry into long distance under Track A.[1] By requiring that there be at least one predominately facilities-based carrier for both business and residential customers, the Commission assures that the BOCs are not discriminating against one or the other class of service, and that different hurdles for the two segments do not frustrate facilities-based competition in either. As recent experience in New York shows, BOCs might well desire to impose different burdens on one class of customers than another, because they wish to discourage facilities-based competition for one group of customers. Thus BA-NY has stated it will impose non cost-based charges on facilities-based business customers that it will not charge to residential customers. By requiring

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[1]Congress wrote the predominance requirement in section 271(c)(1)(A) to apply "for purposes of this subparagraph" -- *i.e.*, the entire section (c)(1)(A), which expressly concerns service both "to residential and business subscribers" (emphasis added). And, in discussing that requirement, Congress took care to point out that facilities-based competition for residential customers was possible, see H.R. Rep. 104-458, 104th Cong., 2d Sess., at 148 (Conference Report); House Report at 77, thus emphasizing that the facilities-based requirement applies to residential as well as business service.

the existence of competitors offering predominantly facilities-based service to both classes of customers, the Commission has at least some minimal assurance that such differential treatment has not made facilities-based competition in either the business or residential market impossible.

b) The meaning of "predominantly" facilities-based. The term "predominantly" should be interpreted consistent with its ordinary definition to mean that the "majority" or "most" of the facilities used by a CLEC are its own. The number of access lines used by the CLEC that are its own is one measure of the predominance of the CLEC's own facilities but it is not the exclusive one. Other relevant measures include whether a predominant share of the new entrant's operating costs involve its own facilities. Neither the text of section 271 nor the legislative history directs the Commission to employ one of these measures to the exclusion of others. Each of these measures is important, because each is, to some extent, a measure of the independence of the CLEC from the BOC and its ability to define its own services and control its own costs.

A carrier is predominantly facilities-based if a majority of all of its local telephone business is facilities-based. It is irrelevant that the carrier may have a department, location or subsidiary engaged in providing predominantly or exclusively facilities-based service. This internal allocation of responsibility does not establish the existence of a predominantly facilities-based provider of telephone service. None of these sub-components are what is commonly meant by a "provider." To hold otherwise would render the predominance requirement meaningless because any company that is providing even the smallest amount of facilities-based service is likely to have a division or group responsible for that service. This is an area where a

simple, bright-line rule adopting a literal understanding of the plain statutory text will preclude manipulation of the regulatory process that could result from a less straightforward rule.

c) The importance of geographic dispersion. Track A requires the existence of a competing provider that "must be an actual commercial alternative to the BOC." Okla. Order ¶ 14. The Commission has "recognize[d] that there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC." Mich. Order ¶ 77. Accordingly, the Commission could fairly conclude that Track A requires the existence of CLECs that serve customers geographically dispersed throughout a state. A CLEC that only provides service in one small area within a state is not an actual commercial alternative to the BOC as a practical matter. The fundamental purposes of Track A -- to permit in-region BOC entry only when the BOC faces meaningful competition, and to promote such competition -- would be thwarted if a BOC could satisfy Track A when a competing provider serves only a narrow geographic area. As Congress explained in addressing the meaning of Track A, "[i]t is also the Committee's intent that the competitor offer a true 'dialtone' alternative within the State, and not merely offer service in one business location that has an incidental, insignificant residential presence." House Report at 77. Of course, the converse is also true: Track A does not require that a predominantly facilities-based provider offer service to every customer in every geographic area.

d) Treatment of multiple dwelling units. A CLEC's provision of service to the owner of a multiple unit dwelling who resells the service to residents of the building is provision to a business subscriber, not a residential subscriber. The subscriber, the owner of the building, is not purchasing the service for his personal use but in order to use the service in the course of